MERCELIS *v.* WILSON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 68. Submitted November 6, 1914.—Decided January 5, 1915.

While parties cannot give jurisdiction and may sometimes except to an erroneous ruling in their favor, in this case *held* that as the court had jurisdiction both of parties and subject-matter, the party invoking a ruling to change a bill for injunction to one to quiet title, cannot ask a reversal on the ground that the court had no power to grant such a motion.

As this case involved the fixing of a line, when that question was settled it was proper to quiet the title of each party as against the other; and as the findings support a decree in accord with the character of the proceedings asked for by appellant and which prevented a multiplicity of suits, such a decree was properly entered.

5 P. R. Fed. Rep. 492, affirmed.

THE facts, which involve the validity of a decree quieting title to property in Porto Rico, are stated in the opinion.

Mr. Hector H. Scoville and *Mr. Joseph Anderson, Jr.*, for appellants.

Mr. Felix Frankfurter, *Mr. S T. Ansell* and *Mr. Wolcott H. Pitkin, Jr.*, Attorney General of Porto Rico, for appellees.

this court on a record containing sixteen assignments of error, in which appellants complain of the findings against them; insist that the court erred in holding that equity had jurisdiction to decide the question of title, and in not sending that question to a court of law to be determined by a jury. They contend that it was error, in a proceeding involving title to what was claimed to be public land, to enter a decree in a case to which the Island of Porto Rico was not a party; that the court erred in establishing the line and in deciding the question of title adversely to the appellants; and that in a proceeding in which the sole relief prayed was an injunction, he erred in entering a decree in which he neither granted nor denied the injunction.

The original bill prayed for purely equitable relief by injunction, and if the case be treated as a suit in equity, which was to proceed "in the same manner as a circuit court" of the United States (April 12, 1900, c. 191, 31 Stat. 77, 84, § 34), then there was, of course, no right to demand a trial by jury, although, in its discretion, the court could have taken the verdict of a jury on any issue of fact upon which he desired their finding. On the other hand, if it be treated as a proceeding in a statutory court whose jurisdiction and form of procedure were to be in conformity with the Porto Rican law (31 Stat. 84, § 33), there was nothing to prevent the adoption and enforcement of rules by which relief could be afforded through the intervention of a jury or by the court itself. *Ely* v. *New Mexico R. R.*, 129 U. S. 291, 293; *Hornbuckle* v. *Toombs*, 18 Wall. 648, 654.

It is, however, not necessary to separately consider each of the sixteen assignments of error since they relate to rulings none of which is erroneous if the court, acting on the appellant's motion to amend, was justified in treating the proceeding as in the nature of a bill to quiet title. For in that event there was not only no right to a trial by jury but it was not error, as against the parties to the record, to

ake a decree appropriate to such a bill instead of denying granting the prayer of the original Bill for Injunction. The appellants insist, however, that even with their nsent, the court could not, without a cross-bill, make decree quieting the title. In this view of the case they y upon the assignment of error that "the court erred suggesting and allowing the plaintiffs to amend their l to conform to the proof after the trial of the issues, d the prayer of their bill in such a way as to change the ture and character of the bill from a bill for an injunc- n to a bill to quiet title."

The defendants did not appeal and the appellants can- t be heard to complain of the court's action in granting eir own motion. Parties cannot give jurisdiction and ay sometimes except to an erroneous ruling of the court their favor. *Capron* v. *Van Noorden*, 2 Cranch, 126; *ited States* v. *Huckabee*, 16 Wall. 414, 433; *Mansfield* . *Ry.* v. *Swan*, 111 U. S. 379, 382.

But in this case the court had jurisdiction of the subject- tter and of the parties before it, and therefore the pellants cannot ask for a reversal because of a ruling ich, if not actually invoked, was voluntarily acted upon them when they assented that the Bill should be con- rted into a proceeding to quiet title. *Cowley* v. *Northern cific R. R.*, 159 U. S. 569; *Perego* v. *Dodge*, 163 U. S. 160; *ited States* v. *Memphis*, 97 U. S. 284; *Connell* v. *Smiley*, 5 U. S. 335; *Bethell* v. *Mathews*, 13 Wall. 1, 2. The case olved the fixing of a line. When that question was tled it was proper to quiet the title of each party as ainst the other up to the line thus established. The dings support the decree, which not only operated to event the multiplicity of suits referred to in the original , but was in accord with the character of the proceed- s, which the appellants themselves asked the court to ke. The decree is

Affirmed.